

COUNTIES: County hospital, established under  
COUNTY COURTS: Section 205.350, can be operated only  
COUNTY HOSPITALS: by county court, not by board of  
HOSPITALS: trustees or nonprofit corporation.

August 19, 1964

OPINION NO. 289

Honorable John E. Kelley  
County Counselor  
Jackson County  
Jackson County Courthouse  
Kansas City, Missouri 64106



Dear Mr. Kelley:

This is in answer to your letter of recent date in which you state that the Jackson County Hospital was established under what is now Section 205.350, RSMo, and you ask the question, "Will you please give us an opinion as to whether our hospital can operate under a Board of Trustees, in view of the fact that it was established under section 205.350 or a similar prior statute, or whether or not it can be operated by a non-profit corporation."

Sections 205.350, 205.360 and 205.370, RSMo, provide as follows:

"205.350. County court may purchase land for county hospitals--issuance of bonds.--The county court of any county in this state is hereby authorized to purchase, not exceeding one hundred and sixty acres of land, and locate, build and maintain thereon a county hospital. Bonds may be issued therefor in accordance with the general law governing the issuance of bonds by counties.

"205.360. County poor to be kept in county hospital.--Whenever a county hospital is established and built by

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the county court, as provided in section 205.350, it shall be the duty of such county court to place therein all of the poor persons that the county court shall deem proper to place in said county hospital, who shall be kept there and treated.

"205.370. County court to make rules and regulations--expenses, how paid.--The county court of any such county shall make all rules and regulations for the government of such a hospital, appoint and employ such officers and attendants as in their judgment may be proper, prescribe their duties and fix their compensation. The expenses of maintaining such hospital, including the compensation of officers and employees thereof, shall be paid out of the general revenue fund of such counties, or from the same sources as are provided by law for caring for the poor by counties."

It can be seen from the provisions of Section 205.370 that the duty is placed upon the county court to make rules and regulations for such hospital and to appoint and employ officers and attendants as may be proper, prescribe the duties and fix the compensation of such officers and attendants.

The powers of county courts are succinctly set forth by the Supreme Court of Missouri in the case of Lancaster v. County of Atchison, 180 S.W. 2d 706. The court said at l.c. 708:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void. \* \* \*

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"Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' \* \* \*"

The court further said, l.c. 709:

"\* \* \* Where the statute (Section 8548) 'limits the doing of a particular thing in a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done.' \* \* \* In other words, there can never be an implied power given a county or other public corporation when there is an express power."

In view of the statutory duty expressly placed upon the county court to make rules and regulations for such hospital and to employ personnel to operate the hospital, prescribe the duties, and fix the compensation of such personnel, it is our view that such statutory duty cannot be delegated to a nonprofit corporation or to a board of trustees by such county court.

It is clear that the delegation to a nonprofit corporation or board of trustees of the authority to operate a county hospital established under Section 205.350, RSMo, is not indispensable to the operation of such hospital.

#### CONCLUSION

It is the opinion of this office that a county court has the statutory duty to operate a county hospital established under the provisions of Section 205.350, RSMo, and

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that the county court is without authority to authorize a nonprofit corporation or a board of trustees to take charge of and operate such hospital.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Very truly yours,

*Thomas F. Eagleton*

THOMAS F. EAGLETON  
Attorney General

CBB/fh